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In the Supreme Court of the United States

OCTOBER TERM, 1991

PLANNED PARENTHOOD OF
SOUTHEASTERN PENNSYLVANIA,
et al.,
Petitioners and Cross-Respondents,

vs.

ROBERT P. CASEY, et al.,
Respondents and Cross-Petitioners.

ON CERTIORARI TO THE UNITED
STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE OF "AMERICA 21, FAMILY VALUES FOR THE TWENTY-FIRST CENTURY" AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS AND CROSS-PETITIONERS

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MOTION FOR LEAVE
TO FILE BRIEF AMICUS CURIAE
IN SUPPORT OF RESPONDENTS
AND CROSS-PETITIONERS

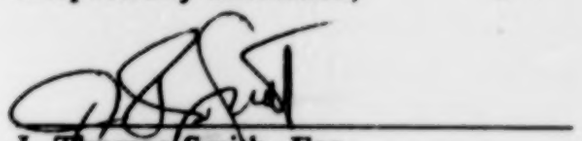
America 21-Family Values for the 21st Century, respectfully moves this Court, pursuant to Court Rule 36.3, for leave to file the accompanying brief amicus curiae in support of Robert P. Casey, et al., Petitioners and Cross-Respondents. The consent of the parties has been sought, but was not granted. America 21 is a national organization formed to promote education and encourage activism concerning family values and issues at the local, state and federal levels of government. One of its primary goals is information and education to achieve legal protection for unborn children. The organization works through a grassroots network established through Christians of several denominations.

The accompanying brief amicus uniquely argues that Proclamation No. 5761, issued January 14, 1988 by President Ronald Reagan, ***declaring the unalienable personhood of the unborn from conception until natural death*** is the "law of the land." It is binding on the Court in this decision and is outcome determinative. The brief further argues relevant legal history of the law of nature, the unalienable right to life, the anti-slavery crusade of the 19th century that forged the "due process" and "equal protection" provisions of the Fourteenth Amendment to extinguish all property rights in mankind, and other arguments supporting the constitutional law as well as authorities cited by Proclamation No. 5761. These additional arguments are put forth as independent bases on which the Court might rest its decision, and it is the belief of amicus that no other party or

amicus will be presenting the information and arguments set forth in the brief.

Therefore, Amicus requests this Court to grant this motion and consider the accompanying brief in support of Respondents and Cross-Petitioners.

Respectfully submitted,



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INTEREST OF AMICUS

America 21, Family Values for the Twenty-First Century, is a national organization formed to promote education and encourage activism concerning family values and issues at the local, state and federal levels of government. One of its primary goals is providing information and education to achieve legal protection for unborn children. The organization works through a grassroots network established through Christians of several denominations.

On its Board of Directors are a group of corporate leaders of national businesses, presidents of colleges and universities, administrator of a foundation, and pastors of some of the largest churches in different denominations including Southern Baptist, Presbyterian (p.c.a.), Churches of Christ, Pentecostal, and Interdenominational.

The family issues America 21 has impacted in the past are abortion, pornography, homosexuality, religious liberty, and parental involvement in education.

Nos. 91-744 and 91-902

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PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA, et al.,
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vs.

ROBERT P. CASEY, et al.,
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SUMMARY OF ARGUMENT

This case involves a review of certain provisions of Pennsyvania statutes alleged by the Petitioners and Cross-Respondents to violate a constitutional "right" to abortion. In Roe v. Wade, 410 U.S. 113 (1973), a majority of the Court held that unborn children are not "persons" entitled to protection by the Fourteenth Amendment to the Constitution and that a right to abortion exists under its penumbra.

Amicus submit that the real threshhold question -- the proper standard of review dispositive of the challenge, is: ***not*** whether there exists a constitutional ***right*** to abortion, but rather whether ***positive federal law*** already exists pursuant to President Reagan's Proclamation No. 5761 (granting recognition of ***personhood*** to unborn children) ***which prohibits abortion***? The Executive Branch has made a political decision to declare ***the unalienable personhood of***

every American from the moment of conception until natural death. This conflicts with no existing congressional legislation. The President acted in the face of Congress' silence and proclaimed that the unborn child ***from the moment of conception*** is a ***person*** for the purposes of the Fifth and Fourteenth Amendments which means that their lives cannot be terminated without "due process" of law. Moreover, the amicus brief alternatively contends that the right to life for the unborn is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." Amicus urge this Court to overrule Roe v. Wade and declare that unborn children are ***persons*** entitled to constitutional protection from the moment of conception under the Fifth and Fourteenth Amendments.

The ***unalienable right to life*** for all human beings including the unborn child was developed and respected in the common law and woven into the fabric and heart of the Nation and its Constitution. This right had its source in the "laws of nature and nature's God" foundational to the Declaration of Independence. Under this law of nature as revealed by the law of God in Scripture, each unborn child has a human destiny and plan for their life prior to birth, is made in the image of God, and their personal protection is a sacred right. Under the canon law of the church, this destiny required the condemnation of all abortion independent of the question of when life began in the womb. Coke, Blackstone, Locke and others confirm that the life in the womb must be protected to the fullest extent of the law because it is ***unalienable*** -- it cannot be disposed of or destroyed by the arbitrary decision of another individual because it belongs to no other person, but to God.

The Declaration of Independence invokes the law of nature and nature's God as its authority, and affirms that "all

men are created equal" and endowed by their Creator with the unalienable right to life. The plain meaning of this language is that constitutional protection for every life vests when these rights are endowed by the Creator -- when the creation process of that individual begins at conception. Failure to provide this protection is a violation of the primary duty of our government.

The scope of protection to be afforded the unalienable right to life is exemplified by the 19th Century anti-slavery crusade which culminated in Congress enacting the "due process" and "equal protection" provisions of the Fourteenth Amendment. This crusade argued the law of nature and equal creation principles in the Declaration of Independence. Under the Fourteenth Amendment, any state law permitting or failing to prohibit the arbitrary taking of the life of the unborn child after conception ***treats the unborn as inhuman chattel***. It and all other such statutes permit a multibillion dollar trade in the lives of the unborn and are unconstitutional as well as immoral. The Fourteenth Amendment excludes no class of humanity from its equal protection of "persons". The protection required by the law of nature was accepted by nearly every state in the 19th Century when each ratified the Fourteenth Amendment, constituting proof of coverage of unborn persons from conception. It vests in every human being a right to life that cannot be held by another at any time after conception, except under due process protection.

The conflict between Proclamation No. 5761 and Roe v. Wade should be resolved by this Court overruling Roe and rendering a decision that affirms the "unalienable personhood from conception" proclamation of the President as an elected representative of the people. Failure to do so will permit and encourage continuing state law enactments

that violate this fundamental right to life. Justice and its orderly administration urge this Court to deny the challenge to the Pennsylvania statutes and affirm the Presidential Proclamation's statement of law that the constitutional protection of the ***unborn child from conception until natural death*** exists under the Fifth and Fourteenth Amendments.

ARGUMENT

I. PRESIDENTIAL PROCLAMATION NO. 5761 DECLARING THE "UNALIENABLE PERSONHOOD OF EVERY AMERICAN FROM THE MOMENT OF CONCEPTION TO NATURAL DEATH" IS THE LAW OF THE LAND

A. President Reagan's Proclamation No. 5761

On January 14, 1988, President Reagan issued a proclamation entitled, "National Sanctity of Human Life Day," which states in part:

> [I]n legislation introduced at my request in the First Session of the 100th Congress, I have asked the Legislative Branch to declare the "humanity of the unborn child and the compelling interest of the several states to protect the life of each person before birth." This duty to declare on so fundamental a matter falls to the Executive as well. By this Proclamation, I hereby do so.
>
> NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in

> me by the Constitution and the laws of the United States, do hereby proclaim and declare ***the unalienable personhood of every American, from the moment of conception until natural death***, and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn children... .

Proclamation No. 5761, ¶¶ 6-7, 3 C.F.R. 3-4 (1988 Comp.), 53 Fed. Reg. 1464 (1988)(emphasis added)(annexed as Appendix "A") [hereinafter Proclamation ¶ ____ to 3 C.F.R. ____].

Proclamation No. 5761 significantly declares ***the unalienable personhood of every American from the moment of conception until natural death*** to be "a cardinal principle of all just law, [t]he God-given, unalienable rights possessed by every human being." Proclamation ¶ 1, 3 C.F.R. 3 (1988 Comp.). The "law" that is proclaimed here is unmistakable and unambiguous from the text of Proclamation itself. Sea-Land Services, Inc. v. Interstate Commerce Comm'n., 738 F.2d 1311, 1314 (D.C. Cir. 1984). Furthermore, Proclamation ¶¶ 1, 4, 6-7 declare that the right of "personhood" which exists from the date of conception to be an "unalienable right" and, therefore, the express wording of the Proclamation controls over characterization of the right to an abortion as a "fundamental right" or a "limited constitutional right," Webster v. Reproductive Health Services, 492 U.S. 490, 520 (1989). Proclamation ¶ 4 expressly provides that the "unalienable right to life" from conception to death is protected against federal and state government deprivation without "due process" of law since it specifically grounds the right on the Fifth and Fourteenth Amendments.

B. "Unalienable Personhood From The Moment Of Conception" Is A Nonjusticiable Political Statement Of Positive Law Binding On This Court And The Entire Land Until Otherwise Lawfully Changed

Proclamations are public law -- a legal act by the Executive Branch of the Government. There is no difference between a Proclamation and an Executive Order, except that the latter are directed to subordinates while Proclamations are issued to the public. ***See generally***, Levinson, Presidential Self-Regulation Through Rulemaking: Comparative Comments on Structuring The Chief Executive's Constitutional Powers, 9 Vand. J. Trans. Nat'l. L. 695, 710-12 (1976).

Presidential proclamations which are ***published*** in the Federal Register, such as Proclamation No. 5761, have "general applicability" and therefore the imprimatur of law pursuant to an act of Congress, 44 U.S.C. §1505(a)(1) (1989). Consequently, the ***"unalienable personhood of every American from the moment of conception until natural death"*** declared by Proclamation No. 5761 is a statement of positive federal law applicable to the entire country.

1. Presidential Proclamation No. 5761 is Law in the Face of Congressional Silence

No law of Congress exists which either grants or denies "the unalienable personhood of every American from the moment of conception until natural death." Congress has been stalemated as the debate about abortion and protection of the unborn rages. But, the First Branch of government has taken the initiative and spoken: Presidential Proclamation No. 5761.

In the absence of either a congressional grant or denial of authority, there is what Justice Jackson has referred to as a "zone of twilight in which he [the President] and Congress may have concurrent authority." Youngstown Co. v. Sawyer, 343 U.S. 579, 637 (1952)(Jackson, J. concurring)(interpreting a Presidential proclamation which conflicted with Congress' constitutional authority over interstate commerce) [hereinafter Youngstown Co.]. Justice Jackson went on to say:

> Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

Id. at 637. Proclamation No. 5761 was authoritatively issued in exactly such circumstances.

Justice Jackson wisely observed: "Presidential powers are not fixed, but fluctuate, depending upon their disjunction or conjunction with those of Congress." Id. at 635. The Court can take judicial notice that ***"the unalienable personhood of every American from the moment of conception until natural death"*** is a statement of positive law which was the result of a conscious political choice or decision by President Reagan. It enunciates the public policy of the United States on a highly debatable issue and, therefore, legally determines that ***conception*** is when "persons" are entitled to the constitutional "due process" and "equal protection" guarantees of the Fifth and Fourteenth Amendments. Consequently, when Congress is silent and

has not legislated, the President by proclamation may declare profound changes in the legal status of citizens, as did President Lincoln in the Emancipation Proclamation. Although questions have been raised, the Emancipation Proclamation has never been ruled by any court to have been an invalid exercise of Presidential authority by Lincoln and still today stands as one of the momentous events of American history. ***See, e.g.***, Oregon v. Mitchell, 400 U.S. 112, 253 (1970)(Brennan, White and Marshall, J.J.); Youngstown Co. v. Sawyer, 343 U.S. 579, 685 (1952)(Vinson, C.J. dissenting). Like Executive Orders, Letter Carriers v. Austin, 418 U.S. 264, 273, n.5 (1974), Presidential Proclamations become the law of the land, United States v. Smith, 342 U.S. 225, 227 (1952).

Indeed, Proclamation No. 5761 by President Reagan is just as sweeping as that of President Lincoln in freeing the slaves, both of which guaranteed ***life to humans*** who were defenseless and oppressed. Strongly held opinions on each side of the issue existed. Presidents, in equally critical times in our Nation's existence, have moved politically by way of proclamation to change the course of history.

2. Ample Constitutional and Other Legal Authority Supports Proclamation No. 5761

Independent Meat Packers Ass'n. v. Butz, 526 F.2d 228, 235 (8th Cir. 1975), ***cert. denied***, Consumer Fed. of Am. v. Butz, 424 U.S. 966 (1976), invalidated a Presidential proclamation because it cited no specific source of authority other than generically "the Constitution and laws of the United States." However, Proclamation No. 5761 enumerates eight different bases for its declaration of the ***"unalienable personhood of every American from the moment of conception until natural death"*** as law. They are: 1) the Declaration of Independence; 2) the Constitution (Article II, Section 3) that every President is sworn to preserve, protect and defend; 3) the Fifth Amendment; 4) the Fourteenth Amendment; 5) our history; 6) our heritage; 7) our concepts of justice; and 8) recent medical and scientific evidence. Proclamation ¶¶ 4-6, 3 C.F.R. 3 (1988 Comp.). This Court has unequivocally held that the duty of the President--pursuant to the Constitution, Article 2, Section 3, which obligates him to "take care that the laws be faithfully executed," is not limited to the express laws of Congress and express terms of treaties, but includes "the rights, duties and obligations growing out of the Constitution itself...and all the protection implied by the nature of the government under the Constitution." In Re Neagle, 135 U.S. 1, 64 (1890).

Thus, the scope of the Executive Power extends to the Constitution, its interpretation and execution. Otherwise the President's oath of office to "preserve, protect and defend the Constitution" is meaningless. Consequently, as an independent branch of the government, the Executive is obliged to make his own interpretation of the meaning of the Constitution on matters committed to that office.[1]

It is the duty of the courts to uphold the constitutionality of the President's action. Great weight is accorded the President's own interpretation and construction of his powers. The courts will assume that the President has complied with the requirements of the law. Glendon A. Schubert, Jr., The Presidency and The Courts 354 (1973)(comprehensive listing of Presidential Orders from 1919-1953).

3. The Political Decision of Proclamation No. 5761 Is Nonjusticiable

The words of this Court in United States v. Sandoval, 231 U.S. 28, 46-47 (1913) (deferring to the Executive Branch's decisions regarding Native Americans) rings familiar with respect to the class of unborn children: "The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell," and, "In reference to all matters of this kind, it is the rule of this court to follow the Executive and other political departments of the Government...."

Drawing lines of just when constitutionally protected life begins -- trimester or whenever, is akin to the immigration cases where Congress or the President are involved in the "inevitable process of 'line drawing'," Fiallo v. Bell, 430 U.S. 787, 795, n.6 (1977)(hereinafter Fiallo), where intentional choices are made which provide some aliens preferential privileges and not to others. There is more than just a similitude between "aliens" and "unborn children". Fiallo holds that where policy matters are involved and

> a wide variety of classifications must be defined in the light of changing political and economic circumstances, such decisions are frequently of a character more appropriate to either the Legislature or the Executive than to the Judiciary....

Id. at 796. Significantly, Roe v. Wade can be overruled simply on this ground alone: the Roe Court impermissibly

intruded into the political arena and legislated a solution to a problem which was best left to the other branches of government -- the Executive or Legislature. Clearly, five of the six standards listed in Mathews v. Diaz, 426 U.S. 67, 82, n.21 (1976)(any one of which will justify abstention), exist in the case at bar. First, the pro-abortion contention that deciding when human life "begins" is inexorably tied to one's opinion more than empirical fact, evidences that prominent on the surface of this case is a political question which constitutionally and textually is committed to another coordinate political department. Proclamation No. 5761 was self-executing by its own terms and became law since Congress failed to respond with enacted legislation. Second, there may be lacking judicially discoverable standards to resolve this issue -- although Amicus in Section II provides what we believe are sufficient supporting histrionics. Third, the controversy by its very nature lends itself to a policy determination by either the President or Congress, that is, the exercise of nonjudicial discretion. Fourth, the passage of time demonstrates the truth that the prior attempt of the Court in Roe v. Wade to provide a solution has not worked as a practical matter. And fifth, the existence of Proclamation No. 5761 by President Reagan and its decisive pronouncement of law that ***"the unalienable personhood of every American from the moment of conception until natural death"*** clearly presents the need for unquestioning adherence to a political decision ***already made***. Thus, for any one of these five reasons, judicial abstention is warranted.

4. Proclamation No. 5761 Tacitly Overrules ***Roe v. Wade***

In 1988, ***"the unalienable personhood of every American from the moment of conception until***

natural death" of Proclamation No. 5761 became the lawfully declared political determination of President Reagan as law. Therefore, any potential or actual conflict with the 1973 decision of Roe v. Wade must yield in favor of Proclamation No. 5761 in much the same way that congressionally enacted law, contrary to previous Court rulings, prevails. Public Employees Retirement System of Ohio v. Betts, 492 U.S. 158, 167 (1989); Green v. Bock Laundry Machine Co., 490 U.S. 504, 513 (1989); National Labor Relations Board v. Bell Aerospace Co., 416 U.S. 267, 278 (1974).

The underlying policy reason for such deference by the Judiciary can be traced to the traditional role of the President and the Congress as elected representatives of the people to decide major political questions, especially those with serious constitutional law dimensions. This policy consideration and the authorities cited below require the Court to defer to the wording of Proclamation No. 5761 that ***life begins at conception for every American*** and overrule Roe v. Wade.

II. THE UNALIENABLE RIGHT TO LIFE DEFINED IN THE LAW OF NATURE, THE DECLARATION OF INDEPENDENCE AND THE HISTORY OF THE FOURTEENTH AMENDMENT IS "SO ROOTED IN OUR TRADITIONS AND CONSCIENCE AS TO BE FUNDAMENTAL" AND REQUIRES A DETERMINATION THAT AN UNBORN CHILD IS A "PERSON" UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS

The broad sweep of the provisions of the Fourteenth Amendment has provoked considerable debate about meaning and have led historians and scholars to look beyond the usual contemporaneous sources. Amicus contends with several prominent historians that the anti-slavery crusade of 1830-1844 developed all the constitutional dialogue and articulation of purposes that explain the intent of the framers and the meaning of the Amendment. Out of this dialogue can be traced a continual reference to an unalienable right to life that began its formulations in a "higher law" preceding the formation of the Nation, but preserved by the founders in its documents. The brief begins with the earlier developments to show how the unalienable right to life is indelibly woven into the fabric and heart of the Nation, its Constitution and the Fourteenth Amendment.

A. The Moral Laws of Nature and Nature's God Are Contextually Written into The Declaration of Independence and The Constitution Which Protect The Unalienable Right to Life of The Unborn Child

1. The Scriptural Authority of the Law of Nature's God

The historical teaching of the Church taught a consistent condemnation of abortion independent of the question of the "beginning" of life because of the destiny of the conceptus. The law of nature's God in scripture clearly establishes the creation of the personhood of each individual in the womb. By revelation, David (Psalm 139:13-16), Job (Job 10:9, 11-13; 14:14-15), Isaiah (Isaiah 49:1) and Jeremiah (Jeremiah 1:5) all affirm that God created them in the womb, and that there existed a call on and a plan for their lives before birth.

John the Baptist received the baptism of the Holy Spirit in the womb. Luke 1:15. His mother, Elizabeth, received a visit from her cousin, Mary, just after she had conceived Jesus by the Holy Spirit. On Mary's arrival, the most dramatic declaration of ***personhood at conception*** in history occurred: After the embryo -- Jesus -- in Mary's womb entered the room, the six months old unborn child -- John the Baptist -- in Elizabeth's womb "leapt for joy" and Elizabeth declared: "Blessed art thou among women...the Mother of my Lord...." Luke 1:41-44.

Scripture also declares that God is no respecter of persons (Romans 2:11; Acts 10:34) and all are equal because they are created in the image and likeness of God (Genesis 1). Consequently, the person created is sanctified or made "sacred" in the womb because it belongs to God and has a human destiny established before birth. Premeditated killing of a life in the process of creation is a violation of the Mosaic law of Exodus 20 and Deuteronomy 5:17. Proverbs 6:16-19 also declares that the Lord hates hands that shed innocent blood. In this passage there need be no other proof of life than that of innocent blood and its shedding by another.

These passages define a framework of principles of physical and moral law that the Scriptures also declare are revealed to all mankind. The Apostle Paul affirmed that the moral law of God was written on the hearts of unbelievers (Romans 2:14-15) and was set in motion at the creation of all nature that bears witness to its content (Romans 1:20). Consequently, the teaching of the laws of nature's God revealed by the Scripture is that whether one is a Christian, Buddhist, Moslem, or Jew, the law of nature offers a general revelation of creation and its principles that are written on the heart of each individual.

2. Secular Recognition of The Law of Nature and the Law of Nature's God

a. Sir Edward Coke (1552-1634)

The Declaration of Independence referenced the "laws of nature" and "nature's God", using terminology that had its antecedents in the British common law and before that in the canon law of the Catholic church. The law of nature was the eternal moral law governing the universe -- a technical term for "creation law" -- the original plan purposed by Almighty God. G.T. Amos, Defending The Declaration 41 (1989). Sir Edward Coke, in Calvin's case, defined the law of nature as

> that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction, and this is lex aeterna, the moral law...And by the law; written with the finger of God in the heart of man were the people of God a long time governed before the law was written by Moses, who was the first reporter or writer of law in the world....

Calvin v. Smith and Another, Trin. 6 Jac. 1.7 Coke's Reports, 1 (referencing Romans 2:14). Using the writings of the Apostle Paul in Romans, chapter 2 (the law of the gentile nations conforms to the law of nature), Coke defined the law of God as "one" with the law of nature.

b. Blackstone (1723-1780)

One of the most widely read contemporaries of the drafters of the Declaration of

Independence and the framers of the Constitution was Sir William Blackstone, author of Commentaries on the Laws of England (1765). Blackstone affirmed the parallel equality of "the law of nature" (the moral law governing nature and inscribed on the heart of man) and the "law of God" (the revelation of the same law in scripture). Sir William Blackstone, Commentaries on the Laws of England (1765, ed.)(St. George Tucker, ed. Philadelphia: William Young Birch and Abraham Small, 1803; reprint, South Hackensack, N.J. Rothmary Reprints, Inc., 1969), 1:41-42 [hereinafter Blackstone, Commentaries].[2]

Where the "right to life" was concerned, Blackstone and his contemporaries admitted no equivocation or conflict, and reflected contemporary thinking that the right was unalienable, and its arbitrary taking a homicide. Blackstone, Commentaries at 133.

c. John Locke (1632-1704)

This sovereignty of the revealed law was also emphasized by another British philosopher and political theorist having a profound impact on the framers of the Constitution. Locke also recognized the "law of nature" and the "law of God" as two statements of the same law.

Locke specifically denied that fathers or mothers have a right over the lives of their children: "[y]et this [heavenly] Fatherhood is such an one as utterly excludes all pretense of Title in Earthly Parents; for he is King because he is indeed Maker of us all, which no parents can pretend to be of their children." John Locke, Two Treatises of Government (Peter Laslett, ed., 1960), §§153-54, p. 197[hereinafter Locke]

Governments were created to secure these fundamental rights of liberty and life. Locke at §57.

d. Other Recognitions of The Law of Nature or Creation Law

Several examples demonstrate that this law of nature is written on the hearts of mankind, regardless of their religious persuasion or lack of it or where they stand in the abortion debate. In 1963, a Planned Parenthood booklet stated that "an abortion kills the life of a baby after it has begun. It is dangerous to your life and health." Planned Parenthood Federation of America, Plan Your Children for Health and Happiness 1963, as cited by George Grant, Grand Illusions, The Legacy Of Planned Parenthood 73 (1989). The National Opinion Research Center, a non-profit polling organization, has been asking the same questions since 1965 that focus on the circumstances under which the law should permit abortions. Its polling demonstrates a consistent public opinion held by large majorities of Americans (75% to 90%) that the law should permit legalized abortion only in the "hard cases" -- to protect the mother's life, rape, incest, etc., representing less than 2% of all abortions today. Tom W. Smith, Trendlets, Abortion After Webster, GSS News, September, 1990[3]. As a 1989 headline of the Boston Globe (a strident pro-abortion newspaper) reported concerning its own poll: Bromer, Most In U.S. Favor Ban On Majority Of Abortions, Poll Finds, Boston Globe, Mar. 31, 1989, at 1. These opinions are evidence of the lex aeterna -- the moral law. A Los Angeles Times poll about the same time concluded: "Most Americans personally consider abortion to be immoral -- in fact, 'murder'." Shelton, Most Americans Think Abortion is Immoral, Los Angeles Times, Part I., Mar. 19, 1989, at 2.[4]

3. Codification in Our Seminal Political Documents -- The Declaration of Independence and The Constitution

By the time Jefferson penned the Declaration of Independence, the unalienable right to life and equal protection founded in the law of nature had become more than "self-evident", they were axiomatic. Amos at 78 and 79.

The Declaration references the "laws of nature and nature's God" as its primary authority:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness, that to secure these rights, governments are instituted among men....

1 U.S. Statutes at Large 1 (1856); ***see*** Boyd, The Papers of Thomas Jefferson Vol. 1, 1770-1776 (1950) at 427. Jefferson also declares in the present tense that "all men ***are*** created equal [emphasis added]". Consequently, the Declaration of Independence speaks of a present and continuing endowment of unalienable rights, including life, for each person. Jefferson reflected the thinking of his time that the rights to equality and life are endowed to each person. They are unalienable because they cannot be sold, traded or compromised without denying the image of God so created. To deny those rights in a man is to deny that he is a human being. Amos at 104.

Since Jefferson referenced the creation of each man, the question under the law of nature is not "When does life begin?" or "When does the unborn child become a person?" The question determining the ***vesting*** of this unalienable right to life becomes "When does the creation process for each man begin in the law of nature?" The answer is ***at conception***. Any law--state or federal--permitting an abortion after conception violates this law of nature of the Declaration, and is void, absent some compelling state interest of equal import to the life being taken.

The Declaration is not, of course, the Constitution itself, but was the only federal constitution that existed in the United States until the Articles of Confederation were ratified and its principles were subsequently incorporated in the Constitution. The equality protected by these documents is more accurately described by Martin Diamond, quoting Locke and Abraham Lincoln, who excluded most of the grounds usually given to deny protection for the unborn, in explaining the meaning of "created equal":

> That equal independence of each from all, as John Locke put it, forms a 'Title to Perfect Freedom' for every man...Thus Lincoln wisely interpreted the Declaration: 'The authors of that noble instrument...did not intend to declare all men equal in all respects. ***They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity***.

> They defined with tolerable directness in what rights they did consider all men created equal--equal in certain unalienable rights, among which are ***life*** [emphasis added], liberty, and the pursuit of happiness.'

Martin Diamond, "The Declaration and The Constitution: Liberty, Democracy, and the Founders," The Public Interest, No. 41, Fall, 1975, pp. 39-55, at 46ff.

In a statement with prophetic import affirming his convictions on this point, Jefferson said: "We are not in a world ungoverned by the laws and the power of a Superior Agent. ***Our efforts are in His hand, and directed by it, and He will give them their effect in His own time.***" Jefferson, 1815; quoted by Maxfield, The Real Thomas Jefferson 404, referenced by John Eidsmore, Christianity and the Constitution at 227 (1987).

B. The Anti-Slavery Crusade of The Abolitionists Through The 19th Century Reaffirmed The Unalienable Right to Life in The Law of Nature and The Declaration of Independence and Demonstrates That an Unborn Child Cannot Be Chattel and Is A Person at Conception Under The "Due Process" and "Equal Protection" Clauses of The Fifth and Fourteenth Amendents

The Constitution, ratified by the States in 1789, was silent on the subject of slavery, just as it is silent on abortion. Because of this silence, the arguments surrounding the debates on slavery centered on the principles underlying the document--the laws of nature and nature's God. The arguments are instructive on the subject of abortion as well as the meaning of the Fourteenth Amendment that marked the culmination of the slavery debate.

One of the most comprehensive chronicles of the anti-slavery crusade is found in the writings of Howard J. Graham. Graham traces the origin of the anti-slavery movement by other historians from the earliest days of the Republic in New England and its basis in the principles of the Declaration. H. Graham, Every Man's Constitution 199-200 (1968)[hereinafter Graham].

In seeking the meaning of the Fourteenth Amendment, Graham acknowledges that his focus prior to 1942 had been on the judicial and congressional interpretations and specifically on the problems attendant to the scope and meaning of the word "persons". Subsequently his focus shifted. Graham cites with special emphasis the work begun in 1947 by the late Gilbert H. Barnes, and others as particularly insightful. In the Anti-Slavery Impulse, 1830-1844, Barnes chronicles the campaign of Theodore Weld, the author of numerous anti-slavery pamphlets, James G. Birney, an Alabama lawyer, and others. Their campaign was spawned out of the revival sweeping the nation at the time (1824-1827) led by Charles Grandison Finney.

State constitutional and legislative provisions discriminating against free black Americans and mulattos were numerous in the period 1800-1860. As described by Graham, the pro-slavery forces led by Calhoun and "positive good Deists" had fashioned a constitutional system which promised absolute protection for slavery and that ignored the constitutional reference to slaves as "persons," referring to them wherever possible as ***property***. Graham at 215.

The response by the anti-slavery crusade was essentially a quest for protection of the laws based upon the law of nature reflected in the Declaration of Independence.

There were three distinct features of the Abolitionist Crusade. First, the failure of the law to protect ***all*** humanity was addressed. Graham at 169. Slavery abrogated the unalienable right, privilege and responsibility of self-ownership by its treatment of men as ***chattel***.[5] Birney attributed the legal disabilities of the slaves to a single erroneous source - ***"the assumed right of property"*** in man. "Philanthropist," July 1, 1836, p. 2. Graham at 219. Another early convert of Weld's, Charles Olcott, an attorney, compiled a work entitled, "Two Lectures on the Subject of Slavery and Abolition," which clearly premised his argument just as did Locke and Jefferson on the higher law:

> ***The law of nature clearly...teaches the natural republican equality of all mankind***. Nature revolts at human slavery, is at open war with it...***The law of God renders all Natural Rights unalienable***...Liberty and right, being good and necessary for the welfare of mankind, are the gifts of God (citing James 1:17) and whatever power violates them, violates and abuses God's gift.

Charles Olcott, Two Lectures On The Subject Of Slavery and Abolition at 24-29; Graham at 203.

Second, as the campaign wore on, abolitionists were stoned, egged, tarred and feathered, tortured and hanged for even speaking against slavery. The campaign sought protection not only from governmental action, but also against private action and mob violence.

Third, in addition to concepts of protection, freedom and equality, Birney's letters in particular evidence extensive

use of the "due process" clause of the Fifth Amendment. A representative piece embodying the sweep of all the above features of the attack is found in a paragraph entitled "Natural Equality" appearing in the Anti-Slavery Record in 1835, that affirms the higher law concepts of the destiny of the conceptus and the Jeffersonian suggestion of pre-natal legal protection over the creation of each man. Graham at 170. Responding to the question of what the abolitionists meant by their statements in accord with the Declaration that "all men are created equal":

> That criminals shall not be deprived of their liberty? No. They mean according to the plain dictates of common sense that, ***in coming into this world and going through it*** [emphasis added], all men shall have an equal and fair chance to exercise all their powers of body and mind for their own happiness.

1 Anti-Slavery Record 8 (1835), Graham at 206.

Weld, in one of his most revered arguments, revealed what became the heart of the movement when he spoke of its purpose to protect all human beings in a way that foreshadows the campaigns for the unborn and the contention of this brief:

> To abolish slavery is to ***proclaim and enact that innocence and helplessness***...are entitled to legal protection...Protection is the ***CONSTITUTIONAL RIGHT*** of ***every human being***...who has not forfeited it by crime.

Weld, The Power Of Congress Over The District Of Columbia 41, 42 (1838)(emphasis added), Graham at 304.

The crucial sections of the Fourteenth Amendment were drafted by Rep. John A. Bingham, its primary sponsor, who received his anti-slavery theory during the Weld-Birney Crusade at Franklin College, and strongly believed in the need for the additional amendment.

The speeches of the sponsors stressed the broadest possible application of the Amendment to humanity. Echoing Weld, Bingham also said the rights guaranteed protected "every human being" (Id. at 1089) and that concerning due process protection, "the only question to be asked of a creature claiming its protection is this: ***Is he a man***?" Cong. Globe, 39th Cong., 1st Sess. 542 (1867). Senator Howard of Michigan, the Amendment's Senate sponsor, said that its provisions would protect the rights of "common humanity." (Cong. Globe, 39th Cong., 1st Sess. 2766 (1866)). Sensitive to the powers reserved to the states to regulate property and personal interests, but resolute concerning the purposes of the Amendment, Bingham nevertheless maintained that:

> You do not prohibit murder in the Constitution; ***you guarantee life in the Constitution***.

Id. at 432 (emphasis added).[6]

Even as the anti-slavery campaigns were sweeping the country, the state legislatures, beginning in 1821 in Connecticut, had begun the process of enacting criminal prohibitions against abortion. The American Medical Association, faced at that time with advances in medical knowledge, and mounted a campaign to protect the unborn throughout pregnancy because abortion was the "unwarranted destruction of the unborn life." The Transactions Of The

American Medical Association, 12 American Medical Association 75, 78 (1859), as reported in the Human Life Bill (S. 158): Report by the Subcommittee on Separation of Powers to the Senate Committee on the Judiciary, 97th Cong., 1st Sess. 25 (1981)(hereinafter HLB Report).

From 1848 to 1876, nearly all the states enacted statutes adopting the AMA position that termination of the pregnancy at any point should be a crime. HLB Report at 24. This evidence presents a compelling conclusion concerning the framers' intent:

> Since the 14th Amendment with its broad protection of the lives of all persons was ratified by state legislatures, while these very same legislatures, persuaded by newly discovered scientific and medical evidence, were extending the protection of the criminal law ***to encompass all the unborn from the time of conception or fertilization***, it is a fair assumption that the unborn were not excluded from those 'persons' covered by the Amendment.

Prepared statement of Rosenblum, The Origins and Evolution Of National Policy (emphasis added) 200-225 (1978), as cited in The Human Life Bill: Hearings on S. 158 Before The Subcommittee on Separation Of Powers, Senate Committee on The Judiciary, 97th Cong., 1st Sess. 475, 480 (1981)(hereinafter HLB Hearings).

C. New Scientific Evidence and Revelations

The general revelation of the "law of nature" has occurred through medical and scientific developments about

the beginning of created life in the womb. The campaign by the American Medical Association in the 1800's was based upon discovered evidence leading to a medical opinion that life began at conception. That organization led a campaign to conform the natural law of man in all the states to the law of nature. The Transactions Of The American Medical Association, 12 American Medical Association 75 (1859), as reported in the HLB Report.

In the 1960's, further revelation occurred in fetoscopy enabling photographs of the process of life in the womb. Some of the first pictures appeared in Life magazine in April of 1965, showing fetal development from 3-1/2 weeks to 28 weeks. In the August, 1990 issue of Life, these first pictures were referred to by the magazine as "sacred" images. The same Swedish photographer -- Lennart Nilsson -- published pictures from the moment of conception entitled on the cover, "How Life Begins" and "The first days of ***creation*** (emphasis added)." When asked the question of when life began, Nillson refused to identify a time and said the questioner should look at the pictures for the answer. Lennart Nilsson, The First Days of Creation, Life Magazine, August, 1990, at 26.

What Life magazine revealed pictorially, the medical and scientific community were discovering through advanced technology. In 1981, the U.S. Senate in Hearings on the Human Life Bill heard the testimony of 57 witnesses from the medical and scientific community which confirmed the "overwhelming agreement" that "conception marks the beginning of life of a human being." HLB Report at 24.

Dr. Jerome Lejeune, internationally known as the "dean of geneticists" who discovered the genetic cause of "Downs Syndrome," has offered numerous reports and

testimony concerning extraordinary advances in DNA research. His widely published report is that the beginning of life at conception has been inferred for over 50 years by scientific induction, but was only a hypothesis until 1985, when new developments in DNA research of the genetic code made this a demonstrable scientific fact. Dr. J. Lejeune, Davis v. Davis Testimony, 21 Child and Family 7 (1989)(French embryologist -- a recognized worldwide genetecist -- medical expert on when life begins)(hereinafter Lejeune).

This scientific discovery revealed by Dr. Lejeune is pivotal in a determination of personhood. As Justice White recognized in his Thornburgh dissent, "the fetus is an entity that bears in its cells all the genetic information that characterizes a member of the species homosapiens, and distinguishes an individual member of that species from all other," and "that there is no arbitrary line separating a fetus from a child or, indeed, an adult human being." Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 792 (1986)(White, J. dissenting). Dr. Lejeune reports that this unique personal identification -- the genetic code -- is present in the ***first cell created at conception*** and "the probability that you will find it identical in another person is less than one in a billion." Lejeune at 7. Dr. Lejeune concluded, "I would say that science has a very simple conception of man: ***as soon as he has been conceived, a man is a man***." Lejeune at 7 (emphasis added).

What is clear is that the framers of the Fourteenth Amendment and their prophetic anti-slavery brethren reaffirmed the constitutional and unalienable right to life. The Roe v. Wade ***focus*** on the "right of the ***mother*** to abortion" clearly is ***misplaced*** and has no historical support.

It is contrary to fundamental constitutional protection because it vests in the mother a right of arbitrary power over the life of the unborn child from inception until his or her birth. No other class of humanity is subject to such an arbitrary risk of being burned alive in saline solution or torn limb from limb in excruciating pain. It has spawned a multi-billion dollar industry that is paid handsomely to take the child's life and trade in his or her body parts. In most instances, if not sold for experimentation, the remains are heaped in trash bins and denied any right of burial afforded the rest of humanity.[7] In sum, it commits the fundamental constitutional offense of slavery contrary to the law of God -- it denies the image of God in man, desecrates what the Scriptures refer to as the temple of the Holy Spirit, and makes the "person" a mere ***chattel***. Any characterization of the unborn permitting the termination of their lives after conception and the beginning of the creation process commits ***this*** grave moral and constitutional offense.

III. THE UNALIENABLE PERSONHOOD OF UNBORN CHILDREN DEMANDS THAT THE CHALLENGE BY PETITIONERS TO THE PENNSYLVANIA STATUTES BE REJECTED

Proclamation No. 5761, declaring the unalienable personhood of the unborn from conception and their protection under the Fifth and Fourteenth Amendments, demands that the challenge by Petitioners to the Pennsylvania statutes fail. The Roe court specifically acknowledged that "[if] this suggestion of personhood is established, the [case alleging a right to abortion], of course, collapses, for the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment." 410 U.S. at 156-157. Amicus contends with Respondents that the sections of the Pennsylvania statutes challenged by Petitioners are

constitutional, but Amicus further urges that the decision of this Court affirm the ***unalienable personhood from conception*** of Proclamation No. 5761 to be a constitutional protection for the unborn child. The broad scope and impact such a decision would have on state regulation should lead this Court to follow Brown v. Board of Education, 347 U.S. 483, 495-96 (1954), where further proceedings were set and additional briefs submitted, to determine the scope of the due process and equal protection to be afforded the unborn children.[8]

CONCLUSION

What do the Afro-American slaves prior to the Civil War and today's American unborn children share in common? The highest court in the land declared both to be non-persons or ***chattel*** -- Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1857) for slaves and Roe v. Wade for unborn children.

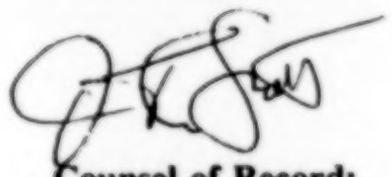
Significantly, the Executive Branch initiated the changes in the law to end both these injustices: President Lincoln's Emancipation Proclamation and President Reagan's Proclamation No. 5761. The situation was redeemed with a stunning series of cases advancing racial equality. Will humanity again be recognized with respect to unborn children -- surely the most helpless, innocent, and defenseless of all clients ever brought before this Court -- or will what masquerades as thinly disguised genocide continue unabated?

Both the lives of dehumanized slaves and unborn children have and are being involuntarily terminated (murdered), without their consent or due process of law, because both were legally classified by judicial decisions as

chattel. The killing fields are not in some distant land for whom foreign people are responsible, but right here in the United States for which each of us are personally accountable. The Scriptures tell us that "[i]n your skirts is found the blood of the souls of the poor innocents," Jeremiah 2:34, which cry out to God for help. Cain, after murdering Abel, asked the Lord: "[A]m I my brother's keeper?" Genesis 4:9. This is precisely the question which is faced today: will the Court declare the Constitution, and therefore each American, to be humanity's keeper as required by Proclamation No. 5761 which mandates protection for unborn children from the ***moment of conception*** to natural death?

Furthermore, America 21, Amicus, urges the Court to overrule Roe v. Wade and set this case for further briefing on the issue of the scope of due process and equal protection to be afforded the unborn children of America.

Respectfully submitted,



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ENDNOTES

1. Thomas Jefferson, in a letter concerning the Alien and Sedition Laws, wrote: "You seem to think it devolved on the judges to decide on the validity of the sedition law. But nothing in the Constitution has given them a right to decide for the Executive, more than to the Executive to decide for them. Both magistrates are equally independent in the sphere of action assigned to them." VIII Writings Of Thomas Jefferson 310 (P. Ford. ed. 1897).

   Echoing Jefferson are the words of Andrew Jackson:

   > The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath swears that he will support it as he understands it, not as it is understood by others.

   A. Tourtellot, The Presidents on The Presidency 35 (1964).

2. Blackstone identified the common source in revelation as the tie binding the symmetrical relationship between the laws of nature and its God. Blackstone makes a distinction between the "law of nature" and "natural law":

> Yet undoubtedly, the revealed law is...of infinitely more authority than what we call the natural law. Because one is the law of nature, expressly declared so to be by God Himself; the other is only what, by the assistance of human reason, we imagine to be that law.

Blackstone, Commentaries at 42.

3. For a survey of the reasons women have abortions, see Torres and Forrest, Why Do Women Have Abortions?, 20 Family Planning Perspectives 169 (1988). Amicus does not contend that exceptions to criminal abortion to save the life of the mother, rape, incest or any other reason are a part of the law of nature or are permitted within the scope of the due process and equal protection provisions of the Fifth and Fourteenth Amendments. Justice Blackmun, in Roe, maintained that lesser penalties for criminal abortion than those imposed for murder, and giving immunity to prosecution to women were inconsistent with equal protection requirements. Roe v. Wade, 410 U.S. at 158, n.54. Several law review articles have maintained that properly structured, exceptions to save the life of the mother were justified under necessity or self-defense theories, and a form of immunity to women through prosecutional discretion could be crafted consistent with equal protection requirements. ***See*** Byrn, An American Tragedy: The Supreme Court on Abortion, 41 Fordham L.Rev. 807

(1973), Destro, Abortion and the Constitution: The Need for a Life-Protective Amendment, 63 Calif.L.Rev. 1250 (1975); Dellapenna, The History of Abortions Technology, Morality, and the Law, 40 U.Pitt.L. Rev. 359 (1979).

Amicus contends that the essential component of an equal protection requirement is a criminal penalty commensurate with those imposed for the taking of the life of a person after birth. In an aggravated case involving malicious conduct, the penalty should be the same as for murder, although it might be reduced for an affirmative defense of diminished capacity. This requirement would achieve two purposes: first, it would provide a substantial prosecutorial tool in stopping "back alley" abortionists who would not be deferred by lesser penalties; and, second, it would prevent any exceptions that might be added by a state from being used by abortionists as an open door for business as usual. Amicus urges the Court to declare that at conception the unborn child is a "person" under the Fifth and Fourteenth Amendments and then set this case for further briefing and reargument on these issues of the scope of "due process" and "equal protection" as it did in Brown v. Board of Education, 347 U.S. 483, 495-96 (1954).

4. Several previous polls asking questions differently have established the percentage of the public believing abortion to be immoral from 40% to 65%. See generally, Adamek, Policy Implications of Recent Polls on Abortion, NRL News, June 22, 1989, at 10.

5. A good history of the inhumanity to Black Americans is summarized in University of California Regents v. Bakke, 438 U.S. 265, 389-90 (1978).

6. Similar positions were offered by Republican William Lawrence, who also traced his anti-slavery roots back to Franklin College before 1838 at the heart of the revival. In a speech of January 6, 1874 on the Supplementary Civil Rights Bill Number 796 (forbidding discrimination by hotels and carriers), Lawrence asserted that a state might deprive its citizens of their unalienable rights by prohibitory laws or a failure to protect any one of them and maintained that both individual invasions ***and state inaction*** were covered by the Fourteenth Amendment:

> Now there are two ways in which a state may undertake to deprive citizens of these absolute, inherent and unalienable rights: either by prohibition laws or by ***a failure to protect*** any one of them [emphasis added]. Id. at 1832. The object of this provision [the equal protection clause] is to make all men equal before the law...What the state permits by its sanction, having the power to prohibit, it does in effect itself.

43 Cong. Reg. 412-414 (1894). Imposing a due process provision on the states that was already imposed on the

federal government, the Fourteenth Amendment incorporated the unalienable right to life and made it binding on the states.

7. More than 1.5 million abortions occur each year in this country. Medical Hopes and Abortion Policies, Chicago Tribune, Mar. 25, 1990, Zone C at 2. A substantial business has developed in providing and selling aborted body parts and fetal tissue. More U.S. Curbs Urged in the Use of Fetal Tissue, N.Y. Times, Nov. 19, 1989, Sec. 1, at 1. In order for trafficking in aborted fetuses to be efficient and practical:

> Mr. Bardsley said, he looks for abortion clinics or doctors who use particular abortion methods. They cannot inject the fetus with saline, urea or other substances to kill it before the abortion because then the fetal tissue would not be usable. Instead, the abortion must be done by dilation and evacuation, in which the doctor essentially pulls the fetus out of the anesthesized woman.

Id. Another article stated:

> At the moment, researchers must get tissue from fetuses that have been fragmented by being sucked through a tube, a

process that kills the fetus as it removes it from the womb. In less than 10 percent of the time are the specimens usable for transplantation, James Bobb, Jr. said.

He then described a more successful technique used by some researchers in Europe, in which brain tissue is obtained by altering the procedure so as to suck out the head first.

'This is the real world. Techniques have been developed to harvest tissue from live fetuses, thereby killing the fetuses. NIH regulations would not prohibit this,' Bopp said.

Wash. Post, Nov. 22, 1991, at A3. P.R. Newswire, Aug. 13, 1990 (Nexus, Exec./Allexe) reported:

'Processing fees for tissue in good condition are giving doctors a financial incentive to schedule abortions so that scientists can get the exact tissue they want', Bopp claims. The processing fees range from $25 to more than $100 per fetus.

The University of Washington runs a 24-hour fetal collection and dispensal service. NIH Skirts Ban on Transplants of Fetal Tissue, Wash. Times, Jan. 6, 1992, at A7.

8. The principal contention of Amicus is that the challenge to the provisions of the Pennsylvania statutes before this Court by Petitioners and Cross-Respondents should fail based on Roe v. Wade that is no longer the law of the land because of the superceding provisions of Proclamation No. 5761. Part of the dilemma of this case is that only those sections of the Pennsylvania statutes challenged by Petitioners are before the Court. 18 Pa. Cons. Stat. §3211(a) is not before the Court, but would permit an abortion at any time up to 24 weeks gestation. Such a provision would be unconstitutional under the contention of this brief.

If it were to merely overrule Roe and approve the constitutionality of the questioned Pennsylvania statutory provisions and delay declaring the personhood and constitutional protection for the unborn child when a more appropriate case is presented, the Court will engage in what can only be described as a piecemeal review and solution. Such a decision would encourage continuing enactment of state statutes in violation of a fundamental constitutional right. President Reagan's Proclamation No. 5761, declaring as law the "unalienable personhood" from the moment of conception, has existed since 1988 and by this brief, is brought directly at issue before the Court. It and the nonjusticiability arguments should actually aid the Court by simplifying its decision making.

The difficulty of ruling on a part and not the whole is manifest when evaluating 18 Pa. Cons. Stat. §3203 (emergency exceptions to abortion), §3205 (informed consent), §3206(a) (parental consent), and §3209 (spousal notice). Each provision ***assumes the legality of abortion*** and can be construed not to grant any independent authorization of abortion inconsistent with the unalienable right to life. For example, the emergency exception under §3203 could be limited to those commonly accepted medical procedures performed with an intent to save the life of the mother and the unborn child, but where a death of the child may be consequence of the procedure. Under such an anlysis, §3203 is constitutional. On the other hand, 18 Pa. Cons. Stat. Ann. §3206(c) and (d), stating that a judge "shall authorize" the abortion of a child may be unconstitutional, but only if it can be construed to authorize abortions inconsistent with an unalienable right to life from the moment of conception without reference to other provisions such as §3211(a) not before this Court. Amicus contends that it cannot and, therefore, it and the other provisions before this Court are constitutional.

APPENDIX A

PROCLAMATION 5761 -- NATIONAL SANCTITY OF HUMAN LIFE DAY, 1988

January 14, 1988

By the President of the United States of America

A PROCLAMATION

America has given a great gift to the world, a gift that drew upon the accumulated wisdom derived from centuries of experiments in self-government, a gift that has irrevocably changed humanity's future. Our gift is twofold: the declaration, as a cardinal principle of all just law, of the God-given, unalienable rights possessed by every human being; and the example of our determination to secure those rights and to defend them against every challenge through the generations. Our declaration and defense of our rights have made us and kept us free and have sent a tide of hope and inspiration around the globe.

One of those unalienable rights, as the Declaration of Independence affirms so eloquently, is the right to life. In the 15 years since the Supreme Court's decision in Roe v. Wade, however, America's unborn have been denied their right to life. Among the tragic and unspeakable results in the past decade and a half have been the loss of life of 22 million infants before birth; the pressure and anguish of countless women and girls who are driven to abortion; and a cheapening of our respect for the human person and the sanctity of human life.

We are told that we may not interfere with abortion. We are told that we may not "impose our morality" on those who wish to allow or participate in the taking of the life of infants before birth; yet no one calls it "imposing morality" to prohibit the taking of life after people are born. We are told as well that there exists a "right" to end the lives of unborn children; yet no one can explain how such a right can exist in stark contradiction of each person's fundamental right to life.

That right to life belongs equally to babies in the womb, babies born handicapped, and the elderly or infirm. That we have killed the unborn for 15 years does not nullify this right, nor could any number of killings ever do so. The unalienable right to life is found not only in the Declaration of Independence, but also in the Constitution that every President is sworn to preserve, protect, and defend. Both the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life without due process of law.

All medical and scientific evidence increasingly affirms that children before birth share all the basic attributes of human personality -- that they in fact are persons. Modern medicine treats unborn children as patients. Yet, as the Supreme Court itself has noted, the decision in Roe v. Wade rested upon an earlier state of medical technology. The law of the land in 1988 should recognize all of the medical evidence.

Our Nation cannot continue down the path of abortion, so radically at odds with our history, our heritage, and our concepts of justice. This sacred legacy, and the well-being and the future of our country, demand that protection of the innocents must be guaranteed and that the personhood of the unborn be declared and defended

throughout our land. In legislation introduced at my request in the First Session of the 100th Congress, I have asked the Legislative branch to declare the "humanity of the unborn child and the compelling interest of the several states to protect the life of each person before birth." This duty to declare on so fundamental a matter falls to the Executive as well. By this Proclamation I hereby do so.

Now, Therefore, I, Ronald Reagan, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim and declare the unalienable personhood of every American, from the moment of conception until natural death, and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn children. Upon this act, sincerely believed to be an act of justice, warranted by the Constitution, I invoke the considerate judgment of mankind and the gracious favor of Almighty God. I also proclaim Sunday, January 17, 1988, as National Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of every human being and the sanctity of every human life.

In Witness Whereof, I have hereunto set my hand this 14th day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

[Filed with the Office of the Federal Register, 10:50 a.m., January 15, 1988]

Note: The proclamation was released by the Office of the Press Secretary on January 15.